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99 JUN 21 PM 3:19

June 21, 1999

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Dockets Management System
U.S. Department of Transportation
Room PL 401
400 Seventh St., SW
Washington, D.C. 20590-0001

Re: Revisions to the Incident Reporting Requirements and the Detailed
Hazardous Materials Incident Form; Docket No. RSPA-99-5013

To Docket No. RSPA-99-5013: **-19**

The Utility Solid Waste Activities Group (USWAG)¹ is pleased to submit these comments on RSPA's advance notice of proposed rulemaking (ANPRM) on revisions to the incident reporting requirements and the Form F 5800.1 detailed hazardous materials incident form, 64 Fed. Reg. 13943 (Mar 23, 1999). RSPA should be commended for reaching out for suggestions on how to improve this portion of the hazardous materials regulations (HMR). However, USWAG counsels caution in modifying this effective and relatively efficient portion of the hazardous materials regulatory system.

USWAG members are generally satisfied with the current incident reporting requirements and Form F 5800-I. From our perspective, the existing standards serve their purpose well. Although USWAG member companies do not frequently

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USWAG is an informal consortium of the Edison Electric Institute (EEI), the American Public Power Association (APPA), the National Rural Electric Cooperative Association (NRECA) and approximately 80 electric utility operating companies (a list of USWAG members is included with these comments as Attachment A). EEI is the principal national association of investor-owned electric power and light companies. APPA is the national association of publicly-owned electric utilities. NRECA is the national association of rural electric cooperatives. Together, USWAG members represent more than 85 percent of the total electric generating capacity of the United States, and service more than 95 percent of the nation's consumers of electricity. A list of USWAG members is provided as Attachment A.

encounter incidents that trigger telephonic or written notification,* some of the modifications to the reporting requirements under consideration could increase the compliance burden significantly. USWAG does not believe some of the broad proposed changes discussed below would result in benefits that would outweigh the additional burden. The following comments identify those areas where USWAG cautions against modification of the existing program. In addition, USWAG suggests some minor changes to clarify existing regulations.

General

USWAG does not support the extension of the incident reporting requirements: (1) to apply to persons other than carriers; (2) to include undeclared shipments; or (3) to include damage to packagings that does not result in a release of hazardous materials.

First, USWAG opposes the expansion of the reporting requirements to apply to persons other than carriers. Such an expansion could needlessly confuse the reporting process and increase the burden of the hazardous materials regulations on numerous additional parties. Currently, the reporting duty rests squarely with carriers, who are clearly involved with the transportation of these materials and are in the best position to identify and accurately report hazmat transportation incidents. However, an expanded reporting obligation would shift part of the responsibility to parties that might have little or no control over the transportation process, resulting in confusion and increasing the potential for reporting error and failure to report. Furthermore, the proposal raises issues regarding the boundaries of transportation in commerce that are best decided in the context of the HM-223 definition of transportation in commerce rulemaking.

Second, USWAG opposes the expansion of the reporting requirements to include undeclared shipments in the absence of a reportable release of hazardous materials. Certainly where an undeclared shipment of hazardous materials results in an incident that triggers the 49 C.F.R. § 171 .15 or § 171 .16 criteria, telephonic and/or written notification should be required. However, the expansion of reporting requirements to cover undeclared shipments that have not resulted in a reportable incident would simply shift RSPA's enforcement burden to the regulated community. USWAG urges RSPA to limit any such proposal to undeclared shipments discovered in the normal course of transportation and not to create an affirmative duty to inspect for undeclared shipments.

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The electric utility industry transports hazardous materials in relatively small volumes, and the vast majority of these movements occurs under the Materials of Trade exception at 49 C.F.R. § 173.6.

Third, USWAG generally opposes the expansion of the reporting requirements to include damage to packagings that does not result in a release of hazardous materials. The burdens associated with such an expansion are potentially enormous, and a specific definition of "damage" is needed to evaluate the impact of this proposal. The inspection and paperwork burdens associated with an obligation to report all scratches and dents on containers would obviously be tremendous, and we assume that RSPA is contemplating a much narrower expansion. Therefore, we request RSPA to include a clear and limited definition of the term "damage" if it intends to propose such an expansion of the reporting requirements.

The Federal Register notice states, "We anticipate that a modest increase in reporting potentially high-consequence incidents would be offset by reduced reporting requirements for incidents with less serious potential impacts." 64 Fed. Reg. at 13943. In the event that RSPA proceeds with the proposed expansions, we urge RSPA to detail the reductions in reporting that will strike this balance.

Telephonic Notification (Section 171.15)

USWAG supports the expansion of the telephonic notification requirement to include notification to the offeror. Such immediate notification could provide a strong safety incentive and would help prevent additional incidents where the offeror's packaging is at fault. Notification to the offeror is especially important where hazardous wastes are involved, since the offeror is generally the waste "generator," which retains ultimate responsibility for the proper disposal of the waste under environmental protection regulations

Written Reports (Section 171.16)

USWAG is concerned that RSPA's proposed definition of "accident" is overly broad. The burden of filing a written report each time a carrier is involved in a "collision" or an incident resulting in departure from the roadway would be extreme and impossible to enforce. If an incident does not result in the release of hazardous materials, there is no justification for RSPA to impose this additional burden. Furthermore, USWAG is concerned that the associated administrative burden of processing numerous reports would divert RSPA from its existing essential hazmat safety functions with no net benefit.

In accordance with National Transportation Safety Board recommendation R-89-52, USWAG supports requiring carriers reporting hazardous materials incidents under 49 C.F.R. § 171.16 to notify shippers whose hazardous materials shipments are involved in the incident. As discussed above in the context of telephonic notice, written notification would serve as a safety incentive for the carrier and would assist the shipper avoid future incidents and fulfill other regulatory duties.

DOT Form F 5800.1

DOT Form F 5800.1 currently provides an adequate mechanism to report hazmat incidents. USWAG does not believe an abbreviated incident report form would provide significant benefits. Neither do we recognize any reason to restructure the form to more accurately describe the cause and manner of packaging failure. For example, sections VIII and IX of the current form address the cause and manner of packaging failure in sufficient detail, and sections V and VI adequately describe causation.

Customer Uses and Needs

USWAG welcomes RSPA's proposal to allow optional electronic filing of incident reports by facsimile, electronic mail, or via the internet. See 64 Fed. Reg. at 13946. USWAG also suggests that RSPA could create a powerful compliance incentive and useful tool for shippers by establishing a searchable database of incident reports, available through RSPA's internet site.

* * * * *

USWAG appreciates the opportunity to submit these comments on RSPA's advance notice of proposed on revisions to the incident reporting requirements. If you have any questions regarding these comments, or if we can assist in any way, please contact USWAG DOT Committee Chairman Tom Gross (626-302-9545; grossta@sce.com) or our counsel Steve Groseclose (202-861-6455; sgroseclose@pipermar.com). Thank you for your consideration.

Sincerely,



Fred McGuire
Chairman,
Utility Solid Waste Activities Group

Attachments

cc: Torn Gross, Southern California Edison, USWAG DOT Committee Chairman
Celeste Heery, USWAG Program Coordinator
Steven Groseclose, Piper & Marbury L. L. P.

Attachment A

Membership List of the Utility Solid Waste Activities Group

Alliant Energy	GPU, Incorporated
Wisconsin Power & Light Company	GPU Nuclear
interstate Power Company	GPU Energy
IES Industries	GPU Genco
Ameren Corporation	Illinois Power Company
AmerenUE	Indianapolis Power & Light Company
AmerenCIPS	Kansas City Power & Light Company
American Electric Power Company	Los Angeles Department of Water & Power
Appalachian Power Company	Madison Gas & Electric Power Company
Columbus Southern Power Company	MidAmerican Energy Company
Indiana Michigan Power Company	Minnesota Power Incorporated
Kentucky Power Company	National Rural Electric Cooperative Association
Ohio Power Company	New England Electric System
American Public Power Association	New York State Electric & Gas Corporation
Arizona Public Service Company	Niagara Mohawk Power Corporation
Baltimore Gas & Electric Company	Northeast Utilities Service Company
Boston Edison Company	The Connecticut Light and Power Company
Carolina Power & Light Company	Holyoke Power and Electric Company
Central Hudson Gas & Electric Corporation	Public Service Company of New Hampshire
Central Illinois Light Company	Western Massachusetts Electric Company
Central & South West Services, Inc.	NiSource, Incorporated
Central Power & Light Company	Northern Indiana Public Service Company
Public Service Company of Oklahoma	Northern States Power Company
Southwestern Electric Power Company	Ohio Valley Electric Corporation
West Texas Utilities Company	OG&E Electric Services
Central Maine Power Company	Pacific Gas & Electric Company
Cinergy Corporation	PacifiCorp
Commonwealth Edison Company	PECO Energy Company
Conectiv	P P & L, Inc.
Atlantic Energy	Potomac Electric Power Company
Delmarva Power & Light Company	Public Service Electric & Gas Company
Consolidated Edison Company of New York, Inc.	Reliant Energy
Consumers Energy	Rochester Gas & Electric Corporation
Dayton Power & Light Company	Salt River Project Agricultural Improvement and
The Detroit Edison Company	Power District
Duke Power Company	Sempra Energy
Duquesne Light Company	San Diego Gas & Electric Company
Eastern Utilities	Southern California Gas Company
Blackstone Valley Electric Company	South Carolina Electric and Gas Company
Eastern Edison Company	Southern California Edison Company
Montaup Electric Company	Southern Company Services, Inc.
Newport Electric Corporation	Alabama Power Company
Edison Electric Institute	Georgia Power Company
Entergy Services, Incorporated	Gulf Power Company
FirstEnergy Corporation	Mississippi Power Company
The Cleveland Electric Illuminating Company	Savannah Electric and Power Company
Ohio Edison Company	Tampa Electric Company
Pennsylvania Power Company	TXU Business Services
The Toledo Edison Company	Virginia Power
Florida Power Corporation	Wisconsin Electric Power Company
FPL Group	Wisconsin Public Service Corporation